

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #04	CCRB Case #: 202105402	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/31/2021 8:50 PM	Location of Incident: Outside of 5014 Church Avenue	18 Mo. SOL 2/28/2023	Precinct: 67		
Date/Time CV Reported Fri, 09/10/2021 12:33 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 09/10/2021 12:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 David Darcy	02921	954700	INT FIO PRG
2. SGT Jonathan Taveras	05450	953469	INT FIO PRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Jose Gomez	09675	964528	067 PCT
2. PO Julio Martinez	07078	958882	067 PCT
3. DTS Joseph Bautista	02403	954534	CCCS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jonathan Taveras	Abuse: Sergeant Jonathan Taveras stopped individuals.	
B.SGT Jonathan Taveras	Abuse: Sergeant Jonathan Taveras frisked individuals.	
C.SGT Jonathan Taveras	Abuse: Sergeant Jonathan Taveras searched individuals.	
D.DT3 David Darcy	Discourtesy: Detective David Darcy acted discourteously toward § 87(2)(b)	
E.DT3 David Darcy	Discourtesy: Detective David Darcy spoke discourteously to § 87(2)(b)	
F.DT3 David Darcy	Abuse: Detective David Darcy threatened to arrest § 87(2)(b)	

Case Summary

On September 10, 2021, § 87(2)(b) filed this complaint with the CCRB online on behalf of himself. Body-worn camera footage revealed additional victims who remain unidentified to the investigation.

On August 31, 2021, at approximately 8:50 p.m., Sergeant Jonathan Taveras from the 67th Precinct Field Intelligence Office (FIO) stopped five individuals inside of 5014 Church Avenue in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g) Sgt. Taveras searched § 87(2)(b) and recovered a knife (**Allegation B: Abuse of Authority**, § 87(2)(g) Detectives David Darcy and Joseph Bautista from the 67th Precinct FIO and Police Officers Jose Gomez and Julio Martinez frisked and searched the other individuals under the supervision of Sgt. Taveras (**Allegation C: Abuse of Authority**, § 87(2)(g) Sgt. Taveras placed § 87(2)(b) under arrest for possessing the knife. § 87(2)(b) drove by as the officers were leaving the scene. § 87(2)(b) called out to the officers through the window. Det. Darcy allegedly mimicked § 87(2)(b) and cursed at him (**Allegations D-E: Discourtesy**, § 87(2)(g) Det. Darcy threatened to arrest § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)

The investigation requested body-worn camera (BWC) videos of this incident from the NYPD Legal Bureau three times. After two negative results (Board Review 01), a third request yielded 21 videos (Board Review 02).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Jonathan Taveras stopped individuals.

Allegation (B) Abuse of Authority: Sergeant Jonathan Taveras frisked individuals.

Allegation (C) Abuse of Authority: Sergeant Jonathan Taveras searched individuals.

Sgt. Taveras testified that he and his partners were canvassing after a gang-related shooting occurred in the area (Board Review 03). Sgt. Taveras observed a group of individuals on the sidewalk outside the smoke shop at 5014 Church Avenue, an area controlled by the Folk gang. He recognized some of the individuals as belonging to the 8 Trey Crips gang. Sgt. Taveras was suspicious because the group was in rival territory, but he did not have any reason to suspect they were involved in the shooting. When Sgt. Taveras was approximately one or two car-lengths away, he saw a metal clip on the waistband of one of the individuals, CV1. The silver clip stood out against the individual's green shirt and appeared to be 3" or 3.5" long and pointed with a screw attached to the handle. Sgt. Taveras recognized this clip as belonging to a knife, not a cellphone, based on his experience as a police officer for ten years and numerous knife-involved arrests. He did not say what kind of knife he suspected it was. Sgt. Taveras told his partners that he observed the knife and decided that they would approach the group. Sgt. Taveras intended to stop the group to address the knife and for no other reason.

Sgt. Taveras, Det. Darcy, and Det. Bautista entered the shop and approached the individuals. Sgt. Taveras immediately asked CV1 if he had identification (ID) on him, and CV1 replied that he did not. Sgt. Taveras lifted CV1's shirt exposing the dark wooden handle of a knife on CV1's right side. Sgt. Taveras removed the knife and saw that it had a 5" or 6" long blade, which was illegal to carry. Sgt. Taveras placed CV1 under arrest and handcuffed him.

Det. Darcy testified that he frisked and searched one of the other individuals (CV2) after CV2 told Det. Darcy that he had a knife in his pocket (Board Review 04). Det. Darcy removed the knife from CV2's front hoodie pocket and found that it was a kitchen knife with a 3" blade. This kind of knife was not illegal to carry. Det. Darcy stated during his interview that he did suspect the group of being involved in the shooting since they were in rival gang territory. His reason for approaching the group was to inquire about the shooting.

Det. Bautista was not interviewed because he was on leave.

PO Gomez and PO Martinez both testified that officers from FIO told them to assist (Board Review 05-06, respectively). PO Gomez and PO Martinez stopped, frisked, and searched a third individual, CV3.

Sgt. Taveras' BWC video did not capture CV1 standing outside the shop or the silver clip on his waistband at the time (Board Review 07). At the 1:04 minute-mark of the player's timestamp, Sgt. Taveras approached CV1 and asked for his ID. CV1 told Sgt. Taveras that he did not have ID. No silver clip was exposed since CV1's untucked shirt fell over his waistband by multiple inches. At 1:12, Sgt. Taveras lifted CV1's shirt exposing his waistband and the top of a knife, the rest of which was tucked into his pants. There was no clip securing the knife on his waist, rather the band of CV1's underwear appeared to hold it in place. Sgt. Taveras removed the folded knife and handcuffed CV1. Sgt. Taveras explained to CV1 that he would be brought to the stationhouse and released after Sgt. Taveras could properly identify him. As Sgt. Taveras and CV1 exited the shop at 2:28, Sgt. Taveras appeared to give instruction to PO Gomez, but the words were unclear from the video.

Det. Darcy's BWC video showed him frisk CV2 at the 00:52 minute-mark (Board Review 08). No audio can be heard prior to Det. Darcy frisking CV2. At 1:01, Det. Darcy entered CV2's front pocket and removed a kitchen knife. Det. Darcy told CV2 that he was confiscating the knife at 2:55. At no point did Det. Darcy ask CV2 about the shooting.

PO Gomez's BWC video showed Det. Bautista enter CV3's hoodie pocket while PO Gomez and PO Martinez detained him, as shown at the 00:40 minute-mark (Board Review 09). Det. Bautista removed what appeared to be a hat from the pocket, frisked it, then returned it. PO Gomez frisked the same pocket after Det. Bautista returned the item. At 1:18, PO Gomez entered the same hoodie pocket. At 1:58, Sgt. Taveras said something to PO Gomez, but his words were unclear in this video as well.

Det. Bautista's BWC showed the point at which he frisked and searched CV3, at 1:05, but his hands were out of frame (Board Review 10). At 1:22, Det. Bautista approached § 87(2)(b) in an orange shirt, CV4, and asked if he had anything on him. CV4 replied that he did not. Det. Bautista appeared to frisk CV4.

Given that no officers, including Det. Darcy, asked any of the individuals about the recent shooting; the fact that Sgt. Taveras stated he did not suspect the individuals were involved in the shooting; and the lack of additional evidence, the investigation determined that the stop was not based on investigating the group for the shooting, as Det. Darcy testified. Rather, the stop was based on Sgt. Taveras' observation of a knife clip. Sgt. Taveras and Det. Darcy provided no other reasons for the stop.

According to *People v. DeBour*, 40 N.Y.2d 210, officers must have reasonable suspicion that a particular person has committed, is committed, or is about to commit a felony or misdemeanor in order to stop and detain them (Board Review 11). Officers may frisk the individual if they reasonably suspect that the person is armed. Additionally, behavior that is susceptible to innocent interpretation will not constitute probable cause, and that innocuous behavior alone does not generate founded or reasonable suspicion that a crime is at hand.

New York Administrative Code §10-133 states that it is unlawful for a person to carry any knife which has a blade length of four inches or more in any public place, street, or park (Board Review

12). Additionally, New York Penal Law §265.01 establishes that a person is guilty of criminal possession of a weapon when the person possesses a switchblade knife, pilum ballistic knife, and metal knuckle knife, or when the person possesses any dangerous knife, undetectable knife, or dangerous instrument with intent to use the instrument unlawfully against another (Board Review 13).

In *People v. Brannon*, 16 N.Y.3d 596, an officer stopped the defendant and seized what appeared to be a gravity knife because he observed the hinged part of a knife in the defendant's pocket (Board Review 14). Upon approaching the defendant, the officer saw the outline of a knife through the material of the defendant's pocket. The officer testified that the knife looked like a pocketknife. The court granted the defendant's motion to suppress the evidence since the officer never testified that he believed the knife was a gravity knife. The court stated that an officer's belief that § 87(2)(b) possesses an illegal knife must be based on discernable aspects of the knife itself, in addition to the officer's training and experience.

People v. Trapier, 47 A.D.2d 481, found that officers had no justification to stop the defendant despite the defendant standing alongside § 87(2)(b) who was believed to be in possession of a gun (Board Review 15). This fact alone did not give officers a reasonable basis to suspect that the defendant was committing, or was about to commit, a crime

§ 87(2)(g)

Without articulable features distinguishing the knife as illegal, Sgt. Taveras' observation of a knife clip is equally susceptible to innocent interpretation as culpable interpretation. § 87(2)(g)

Additionally, Sgt. Taveras' BWC video that showed CV1's shirt covering his entire waistband calls into question whether the clip of the knife was exposed at all during this encounter. Without the knife clip being visible, § 87(2)(g)

Allegation (D) Discourtesy: Detective David Darcy acted discourteously toward § 87(2)(b)

Allegation (E) Discourtesy: Detective David Darcy spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: Detective David Darcy threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that he was driving past 5014 Church Avenue when he saw Sgt. Taveras and the other officers stopping individuals (Board Review 16). § 87(2)(b) slowed down and yelled out the window, "Stop harassing Black people." Det. Darcy approached § 87(2)(b) mimicked his Haitian accent, and repeated, "Stop harassing Black people." § 87(2)(b) stopped his vehicle such that it was parallel to Det. Darcy's unmarked vehicle. § 87(2)(b) told Det. Darcy again to stop harassing Black people. Det. Darcy replied, "Get the fuck out or I will arrest you." When § 87(2)(b) asked what he would be arrested for, Det. Darcy said, "Get the fuck out. I'm going to drag you out of the vehicle and arrest you right now." Sgt. Taveras approached Det. Darcy and told him to calm down. Sgt. Taveras told § 87(2)(b) to move his car because the officers were responding to a shooting. § 87(2)(b) moved his car forward, and Det. Darcy and Sgt. Taveras left the scene.

Det. Darcy testified that he was transporting CV1 to the stationhouse when he stopped and exited his car to confer with other officers (Board Review 04). As Det. Darcy spoke to the officers, § 87(2)(b) pulled his vehicle behind them. § 87(2)(b) yelled out the window, "White piece of shit. Stop

harassing Black kids.” Det. Darcy replied, “Keep moving. This has nothing to do with you.” He did not say anything else. Det. Darcy did not know if § 87(2)(b) had an accent and denied mimicking him and using profanity. Det. Darcy reentered his vehicle. § 87(2)(b) drove his vehicle forward and cut off Det. Darcy such that § 87(2)(b) car was on Det. Darcy’s driver side at a 45-degree angle. This prohibited Det. Darcy from moving. He did not know what was going on or who § 87(2)(b) was. Det. Darcy approached § 87(2)(b) and told him, “If you don’t move your car, you’ll be arrested,” since § 87(2)(b) act of blocking the road with his car constituted “OGA” and disorderly conduct. § 87(2)(b) did not move his car until Sgt. Taveras approached and spoke to him.

Sgt. Taveras’ testimony was generally consistent with Det. Darcy’s (Board Review 03). Sgt. Taveras had never seen § 87(2)(b) before. Sgt. Taveras affirmed that § 87(2)(b) was preventing the officers from performing their duty by blocking their vehicle and vehicular traffic in general. Thus § 87(2)(b) could have been arrested for obstructing governmental administration (OGA) or disorderly conduct. Sgt. Taveras denied that Det. Darcy mimicked § 87(2)(b) or used profanity toward him. When § 87(2)(b) stopped in front of the officers, Sgt. Taveras was initially concerned that § 87(2)(b) was attempting to ambush the officers by blocking their car. There were many bystanders at the time, and the area was dangerous as evidenced by the recent shooting.

Det. Darcy’s BWC did not capture his interaction with § 87(2)(b) (Board Review 17).

Sgt. Taveras’ BWC video showed § 87(2)(b) pulled up alongside the officers’ vehicle and stop at the 00:18 minute-mark (Board Review 18). At 00:26, Det. Darcy exited the police vehicle and approached § 87(2)(b). At 00:30, Sgt. Taveras exited the police vehicle. At 00:32, Det. Darcy told § 87(2)(b) “Move your car right now. Move your car right now or, I swear to God, I will arrest you.” At 00:35, Det. Darcy repeated, “Move your car right now or, I swear to God, I will arrest you,” then yelling louder, “Move your car!” § 87(2)(b) yelled back, “You white piece of shit!” At 00:40, Det. Darcy moved aside, and Sgt. Taveras told § 87(2)(b) “You need to move your car because we’re transporting someone ... Boss, hear me out. You cannot block our car. We are an emergency service unit.” Sgt. Taveras repeated once more for § 87(2)(b) to move his car. At 00:47, § 87(2)(b) replied, “Alright,” and moved his car. The officers reentered their car.

A person is guilty of obstructing governmental administration (OGA) when they intentionally obstruct the administration of law or other governmental function or prevent a public servant from performing an official function, by means of intimidation, physical force, or interference, per New York Penal Law §195.05 (Board Review 19).

New York Penal Law §240.20 states that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, they obstruct vehicular traffic or create a hazardous condition by any act which serves no legitimate purpose (Board Review 20).

While the video did not show Det. Darcy mimicking § 87(2)(b) or using profanity, it did not begin early enough to capture Det. Darcy saying for § 87(2)(b) to “keep moving” as he testified. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) § 87(2)(b) stopped his vehicle in such a way that prohibited the officers from transporting their arrestee in order to yell at the officers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)


Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- Sgt. Taveras has been a member of service for ten years and has been a subject in 18 additional cases and 49 allegations, of which one was substantiated (Board Review 22):
 - 201807315 involved a substantiated allegation of discourtesy. The Board recommended Command Level Instructions, and the NYPD imposed Instructions.
- Det. Darcy has been a member of service for nine years and has been a subject in eight additional cases and 19 allegations, none of which were substantiated (Board Review 22).

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 28, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad: 4

Investigator:		Inv. Devaney	12/16/22
	Signature	Print Title & Name	Date

Squad Leader:	Raquel Velasquez	IM Raquel Velasquez	12/16/2022
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date